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## Comments

# “It Looks Good On Paper”: An Examination of Why the New Iraqi Constitution’s Vague and Contradictory Language May Handicap It from the Start

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An iron curtain of fundamentalism risks falling over Iraq, with particularly grievous implications for girls and women.<sup>1</sup>

## I. Introduction

At the close of the Cold War a wave of democracy and economic

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1. *Constitutionalism, Human Rights, and the Rule of Law in Iraq: Before Subcomm. on Near Eastern and South Asian Affairs of the S. Comm. on Foreign Relations and Subcomm. on the Constitution, Civil Rights and Property Rights of the S. Comm. on the Judiciary*, 108th Cong. 4 (2003) [hereinafter *Hearings*] (statement of Senator Barbara Boxer).

liberalization swept the globe,<sup>2</sup> yet the Middle East remained isolated and significantly unchanged in the aftermath.<sup>3</sup> The current regime change to a new democratic government in Iraq historically marks one of the first democratic Middle Eastern states.<sup>4</sup> Proponents of democracy in the Middle East hope that Iraq's new government will act as an impetus for the spread of democracy throughout the region.<sup>5</sup>

Iraq's new Constitution (the "Constitution"), adopted by referendum on October 15, 2005,<sup>6</sup> officially establishes Iraq's new democratic system of government<sup>7</sup> and pledges numerous rights to all Iraqis.<sup>8</sup> Although the Constitution promises major reform, many scholars have criticized portions of the Constitution for being vague and potentially contradictory.<sup>9</sup> One is left asking whether such an instantaneous and drastic change, while theoretically possible, is practical for the new Iraq, particularly in light of Iraq's long term culture of repressed religious differences,<sup>10</sup> rule by a solitary militaristic leader,<sup>11</sup> and the geographical influences from neighboring non-democratic states.<sup>12</sup>

Constitutions typically begin as written documents,<sup>13</sup> but to succeed they cannot end there.<sup>14</sup> The written provisions within a constitution must be extracted from the pages and woven into the fabric of society itself.<sup>15</sup> Ignoring even a single provision reduces it to nothing more than words on paper and opens the flood gates for other provisions to lie dormant.<sup>16</sup> In effect, ignoring a provision ultimately undermines the constitution itself by paving the path for other constitutional violations.<sup>17</sup>

The success of Iraq as a democratic experiment in the Middle East depends upon the ability of the Constitution to establish a new rule of

2. See TOBY DODGE, *IRAQ'S FUTURE: THE AFTERMATH OF REGIME CHANGE* 7 (Tim Huxley, ed. Routledge 2005).

3. See *id.*

4. See *id.*

5. See *id.* ("A new regime in Iraq would serve as a dramatic and inspiring example of freedom for other nations in the region").

6. See Noah Feldman & Roman Martinez, *Constitutional Politics and Text in the New Iraq: An Experiment in Islamic Democracy*, 75 *FORDHAM L. REV.* 883, 883 (2006).

7. See generally IRAQ CONST.

8. See generally IRAQ CONST. chap. 2.

9. See, e.g., Jim Phillips et al., *Middle Eastern Law*, 40 *INT'L LAW.* 597, 605-06 (2006).

10. See Feldman, *supra* note 6, at 886-90.

11. See DAVID L. PHILLIPS, *LOSING IRAQ* 23-5 (Westview Press 2005).

12. See DODGE, *supra* note 2, at 7.

13. See NORMAN DORSEN ET AL., *Comparative Constitutionalism*, in *COMPARATIVE CONSTITUTIONAL LAW* 1, 9 (2006) (noting that the United Kingdom, New Zealand, and Israel deviate from the general rule and have "unwritten" constitutions).

14. See *id.* at 1.

15. See *id.*

16. See *id.*

17. See *id.*

law.<sup>18</sup> To successfully establish the rule of law in Iraq, the Constitution, at a minimum, must establish a normative standard that recognizes the rules and restrictions within it.<sup>19</sup> The Constitution promises a new democratic government with numerous rights guaranteed to the Iraqi citizens;<sup>20</sup> however, much of the language is vague and potentially contradictory, arguably creating anomalies within the text.<sup>21</sup> If the Constitution's language invalidates itself or permits rights which it guarantees to go ignored, it will in effect become meaningless.<sup>22</sup> If one provision is swept under the rug, it will open the flood gates to countless other end runs around constitutional guarantees.

This Comment focuses on whether the Constitution will become the "law of the land," or a meaningless document. To conduct the analysis, this Comment views the Constitution through the interaction between the provisions promising equality to women and the provisions establishing Islam as the state religion. The analysis will be conducted in four parts. First, this Comment focuses on Muslim women and the countering views of women's equality under Islam. After generally examining women's rights under Islam, this Comment examines the treatment of Muslim women in the State of Iraq specifically. The third section of this Comment reviews Iraq's history up to the adoption of the Constitution. Finally, this Comment analyzes the Constitution textually and historically to determine whether the two sets of provisions create an irreconcilable anomaly. Ultimately, this Comment concludes that the constitutional rights of women will go unrecognized, effectively undermining the Constitution itself.

## II. The Status of Women Under Islam

Under Islamic law, women's status in society is subject to many, often conflicting, interpretations.<sup>23</sup> Muslims adhere to the dictates of three sources of religious law: "the Koran (Islam's sacred text), the hadith (commentaries on the Koran), and the [Shar'ia] (Islamic legal codes)."<sup>24</sup> From these religious texts, Muslims derive multiple

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18. See *Hearings*, *supra* note 1, at 8 (testimony of Prof. Kenneth M. Pollack).

19. See DORSEN ET AL., *supra* note 13, at 1.

20. See generally IRAQ CONST. chap. 2.

21. See Phillips, *supra* note 9, at 605.

22. See DORSEN ET AL., *supra* note 13, at 1.

23. Compare AHMAD ZAKI YAMANI, WOMAN IN ISLAM 5 (Al-Furqan Islamic Heritage Foundation 2005) (claiming that Islam honors women and raises their status more than all other religions), with generally WOMEN IN ISLAM (Margaret Speaker Yuan, ed. Greenhaven Press 2005) (comparing essays by various Islamic scholars regarding opposing viewpoints with regards to a female's role in society).

24. WOMEN IN ISLAM, *supra* note 23, at 5.

understandings of a woman's place in society.<sup>25</sup> It is not unusual for different Muslim sects to take opposing stances on a woman's societal role.<sup>26</sup>

To understand women's rights under Islamic law, it is necessary to look at the treatment of women in the pre-Islamic Arab world, or in the "period of ignorance."<sup>27</sup> During the period of ignorance, there was no law regarding women, only custom.<sup>28</sup> Women were considered chattel and could even be inherited upon their husband's death.<sup>29</sup> Against this historical backdrop, Muslims view Shari'a law's treatment of women as nothing short of "revolutionary."<sup>30</sup>

After the religion of Islam was introduced into the Arab world, laws regarding women were written for the first time.<sup>31</sup> With the passage of time, however, these laws have come to mean different things to different Muslim sects.<sup>32</sup> To generate a working knowledge of a Muslim woman's rights, explanations for opposing view points will be explored both in terms of a female's role in society at large, and a female's role in her marriage.

#### A. *A Muslim Woman's Role in Society at Large*

Several aspects of a Muslim woman's place in society raise questions about her equal treatment.<sup>33</sup> The practice of veiling,<sup>34</sup> women's ability to hold public office,<sup>35</sup> women's inheritance upon the death of a parent,<sup>36</sup> women's ability to travel,<sup>37</sup> and the legal weight of women's testimony<sup>38</sup> all flag concern for advocates of equality. Muslim theologians disagree on what these practices mean for the equality of women as well as their underlying rationale.<sup>39</sup>

25. *See generally id.*

26. *See id.* at 9-23.

27. ASGHAR ALI ENGINEER, *THE QUR'AN WOMEN AND MODERN SOCIETY* 26-7 (New Dawn Press, Inc. 2d ed. 2005).

28. *See id.*

29. *See id.*

30. *Id.*

31. *See id.*

32. *See generally* WOMEN IN ISLAM, *supra* note 23 (examining opposing viewpoints of women's rights by Islamic scholars).

33. *See, e.g., id.*

34. *See* RON GEAVES, *ASPECTS OF ISLAM* 232 (Georgetown University Press 2005).

35. *See* YAMANI, *supra* note 23, at 135.

36. *See id.* at 113.

37. *See id.* at 137.

38. *See id.* at 120.

39. *Compare generally* YAMANI, *supra* note 23 (arguing that Islam treats women as equal), *with generally* WOMEN IN ISLAM, *supra* note 23 (relaying arguments that Islam is inherently discriminatory to women).

The most notable allegation of sex discrimination within Islam comes from the practice of veiling.<sup>40</sup> Whether veiling is a tenant of the Islamic faith is left up to debate.<sup>41</sup> Some argue that Islamic law requires women to veil themselves<sup>42</sup> and that the failure to do so is a serious infraction.<sup>43</sup> Others maintain that veiling is not required, but women choose to veil themselves under their own free will.<sup>44</sup> According to the latter school of thought, the personal choice of veiling comes from a desire to dedicate oneself to religion and take a spiritual stance against a secular society.<sup>45</sup> Moreover, any law providing consequences for the failure to veil is considered a consequence of cultural mores as opposed to spiritual mandate.<sup>46</sup> In practice, veiling widely varies in form from a simple scarf over a woman's head<sup>47</sup> to a full body covering including a gauze over the face and eyes known as a hijab.<sup>48</sup> Thus, Muslim nations differ not only in whether veiling is required legally,<sup>49</sup> but also in its form.<sup>50</sup> Although veiling may be the most notorious allegation of sex discrimination in Muslim nations,<sup>51</sup> it is far from the only concern regarding women's equality.

The question of women's ability to participate in politics is answered with the same indecision as the practice of veiling.<sup>52</sup> Muslim men are authorized to hold any public office so long as they meet the requirements of the position;<sup>53</sup> however, the issue of whether women can hold public office is unclear.<sup>54</sup> The Koran is silent on the issue,<sup>55</sup> but a single hadith foretells: "[a] community which assigns its affairs to a woman shall not be successful."<sup>56</sup> The meaning of this hadith is debated frequently among three schools of thought.<sup>57</sup> One school asserts that it

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40. See GEAVES, *supra* note 34, at 232.

41. See ENGINEER, *supra* note 27, at 59.

42. See *id.* For example, in Saudi Arabia, women are not permitted to leave their homes without first veiling themselves. If they do not follow this rule, they risk serious punishment.

43. See *id.* at 60.

44. See GEAVES, *supra* note 34, at 232.

45. See *id.*

46. See *id.*

47. See ENGINEER, *supra* note 27, at 59.

48. See *id.*

49. See *id.*

50. See *id.*

51. See GEAVES, *supra* note 34, at 232.

52. See YAMANI, *supra* note 23, at 135-38.

53. See *id.* at 135.

54. See *id.*

55. See *id.*

56. *Id.* at 147.

57. See YAMANI, *supra* note 23, at 135.

prevents women from entering the public arena at all,<sup>58</sup> a second argues that women may hold some public offices and not others,<sup>59</sup> while a third school asserts that the hadith simply forbids women from holding the ultimate leadership position of a nation.<sup>60</sup> Consequently, at a minimum, those that adhere to the hadith prevent women from acting as the political leader of a state.<sup>61</sup>

The Islamic inheritance scheme also attracts criticism in regard to women's equality.<sup>62</sup> Upon the death of her parents, a Muslim female receives a disproportionately small amount of inheritance as compared to her brothers.<sup>63</sup> According to the Koran, "[t]he male [children] shall have a share equal to that of two females."<sup>64</sup> Critics advocate that allotting a son twice the inheritance of a daughter is fundamentally discriminatory.<sup>65</sup> However, defenders of the rule's alleged equality point out that it only applies to the *children* of the deceased.<sup>66</sup> Others, for example parents, may inherit equally regardless of sex.<sup>67</sup> Moreover, they claim that the rule makes sense because first, males will inherit more debt than females,<sup>68</sup> and second, males will one day have to pay for a dowry, while females will be the recipient of one.<sup>69</sup> Therefore, regardless of their views, both advocates and dissenters of Muslim women's status agree that the Koran provides half the amount of inheritance for daughters than it provides for sons.<sup>70</sup> Rather, it is the justification for the rule which leaves them debating.<sup>71</sup>

Yet another concern over women's equality under Islamic law is their ability to travel, or the lack thereof.<sup>72</sup> Some Muslim nations impose restrictions on the movement of women without a proper "male companion."<sup>73</sup> A proper companion, or mahram,<sup>74</sup> is a woman's husband

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58. *See id.*

59. *See id.*

60. *See id.*

61. *See id.*

62. *See* YAMANI, *supra* note 23, at 113.

63. *See id.*

64. *Id.* at 114 (quoting *Koran* 4:11-12).

65. *See id.*

66. *See id.* at 116.

67. *See* YAMANI, *supra* note 23, at 116. Yamani asserts that the verse from the Koran applies only to children. Thus, if a person dies leaving each of his parents, they will inherit equal shares. Only the decedent's children would share disproportionately based upon their sex.

68. *See id.*

69. *See id.* at 117.

70. *See id.* at 114-17.

71. *See id.*

72. *See* YAMANI, *supra* note 23, at 117-22.

73. *Id.* at 117.

74. *See id.* at 118.

or male relative she cannot marry.<sup>75</sup> The rules regarding mahrams are found in several hadiths,<sup>76</sup> and the interpretations of these hadiths are particularly controversial.<sup>77</sup> Some Muslims strictly adhere to these hadiths and claim that women must be accompanied any time they travel for a number of days;<sup>78</sup> however, others claim that the hadiths must be read in context.<sup>79</sup> Contextually, it is argued, mahrams are commanded for protection.<sup>80</sup> If there is no need for a woman to have extra protection on a journey, then there is no need for a mahram.<sup>81</sup> Once again, the experts are left in a stalemate regarding whether the requirement of mahrams is discriminatory to women.<sup>82</sup>

A final concern over Muslim women's status as equals is the weight given to their in court testimony.<sup>83</sup> Regarding women's testimony, the Koran commands to "[c]all in two of your men as witnesses, but if two men are not available, then a man and two women . . . so that if either of them should make a mistake, the other will remind her."<sup>84</sup> This verse has been broadened to be the general rule in the Islamic world<sup>85</sup>—whenever a witness before the law is needed one man must be present, and two women can take the place of any additionally-required man.<sup>86</sup>

While the witness rule is still generally followed,<sup>87</sup> advocates of equality under Islamic law as it stands transform the "inequality" into an "advantage" that women have over men.<sup>88</sup> In Islamic legal proceedings today, the second woman, who is present to refresh the memory of the primary female witness, will often remain silent throughout the proceedings.<sup>89</sup> If the second woman wishes to add something, she signals so that she may address the witness to refresh her memory.<sup>90</sup> Today, Islamic scholars maintain that this is an advantage that men do not share since men do not have the "luxury" of having details they cannot recall relayed to them.<sup>91</sup> However, even those that maintain the

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75. *See id.*

76. *See id.* at 119.

77. *See* YAMANI, *supra* note 23, at 117-22.

78. *See id.* at 119.

79. *See id.* at 120.

80. *See id.*

81. *See id.*

82. *See* YAMANI, *supra* note 23, at 117-22.

83. *See id.* at 123.

84. *Id.* (quoting *Koran* 2:282).

85. *See id.*

86. *See id.*

87. *See* YAMANI, *supra* note 23, at 123.

88. *See id.* at 127.

89. *See id.*

90. *See id.*

91. *See id.*



witness rule is a luxury concede that two women must be present to testify in the place of one man, which falls short of equality under Western standards.<sup>92</sup>

In sum, Islamic scholars continue to duel in terms of whether women are treated equally within society.<sup>93</sup> Those alleging the equal status of women claim that the different treatment women experience is either not part of the Islamic faith<sup>94</sup> or justified.<sup>95</sup> However, a female's equality is not challenged solely according to her role in the general population, but also in her role in the immediate family.<sup>96</sup>

### *B. A Muslim Woman's Role in Marriage*

A woman's role in marriage raises several other challenges to the equality of the sexes in the Islamic tradition.<sup>97</sup> Arguably, practices such as divorce,<sup>98</sup> polygamy,<sup>99</sup> spousal discipline,<sup>100</sup> and honor killings<sup>101</sup> are more egregious violations of equality than those that occur in a woman's societal status.

Women hold the initial right to enter into a marriage.<sup>102</sup> When a male proposes, it is within the woman's right to refuse; however, she must affirmatively refuse because silence is considered a passive acceptance of the proposal.<sup>103</sup> Thus, Muslim women have the right to wed any man who asks, with the only stipulation that the man be a Muslim as well.<sup>104</sup>

While the decision to enter into a marriage is reserved for a woman to make,<sup>105</sup> the right to divorce is held exclusively by males.<sup>106</sup> The breadth of the husband's right to divorce is in dispute.<sup>107</sup> Some maintain that a husband can divorce his wife at any time and for any reason by

92. See YAMANI, *supra* note 23, at 123-27.

93. See generally *id.*; WOMEN IN ISLAM, *supra* note 23.

94. See, e.g., ENGINEER, *supra* note 27, at 59 (maintaining that the allegedly discriminatory practice of veiling is not a tenant of the Islamic faith).

95. See, e.g., YAMANI, *supra* note 23, at 116 (asserting that a disproportionate amount of inheritance for women upon their parent's death is justified since they will one day receive a dowry).

96. See generally *id.* at 53-113.

97. See generally *id.*

98. See *id.* at 58-9.

99. See WOMEN IN ISLAM, *supra* note 23, at 21.

100. See YAMANI, *supra* note 23, at 73.

101. See WOMEN IN ISLAM, *supra* note 23, at 68.

102. See YAMANI, *supra* note 23, at 57.

103. See *id.*

104. See *id.* at 58-9.

105. See *id.* at 57.

106. See *id.* at 89.

107. See YAMANI, *supra* note 23, at 89-92; WOMEN IN ISLAM, *supra* note 23, at 21.

simply stating, "you are divorced."<sup>108</sup> Others claim that a lawful divorce requires the parties to first attempt to reconcile.<sup>109</sup> Only when reconciliation is impossible may a man divorce his wife; although, to do so, he must wait for one menstrual cycle without sexual intercourse.<sup>110</sup> Regardless of the breadth of a husband's right to divorce his wife, a wife may only divorce her husband in three scenarios:<sup>111</sup> first, when the husband is impotent; second, when he refuses to pay maintenance; and third, when he is insane.<sup>112</sup> Critics allege that the breadth of a man's right to divorce in comparison with the narrowness of a woman's is inherently unequal.<sup>113</sup>

Along with the right to divorce, Muslim husbands have a right to numerous wives while the wives share no reciprocal right.<sup>114</sup> Men can have up to four permanent wives,<sup>115</sup> provided that they treat each wife equally.<sup>116</sup> "you may marry of other women as may be agreeable to you, two or three or four. . . . But if you fear that you will not be able to maintain fairness between them, then marry only one. . . ."<sup>117</sup> Some commentators maintain that this passage from the Koran implies a ban on the practice of polygamy, which was prevalent prior to the birth of the Islamic religion.<sup>118</sup> The verse requires equal treatment, which includes equality of "inclination, love, sex, sharing life concerns and dividing one's time between one's wives."<sup>119</sup> Because treating multiple wives equally in every aspect of life would likely be impossible, the argument goes, the verse implicitly forbids polygamy.<sup>120</sup> Yet, polygamy still exists in many Muslim nations that believe that equal treatment of wives is possible, at least to the extent required by the Koran.<sup>121</sup>

Where matters of marital misconduct<sup>122</sup> are concerned, Shari'a law states that husbands have the ability to discipline their wives for certain behavior.<sup>123</sup> While the punishment must be light initially, it can escalate

108. WOMEN IN ISLAM, *supra* note 23, at 21.

109. See YAMANI, *supra* note 23, at 90.

110. See *id.* at 89-92.

111. See WOMEN IN ISLAM, *supra* note 23, at 21.

112. See *id.*

113. See *id.*

114. See *id.* at 22-3.

115. See *id.* at 22.

116. See WOMEN IN ISLAM, *supra* note 23, at 65.

117. YAMANI, *supra* note 23, at 78 (quoting *Koran* 4:3).

118. See WOMEN IN ISLAM, *supra* note 23, at 65.

119. YAMANI, *supra* note 23, at 79.

120. See WOMEN IN ISLAM, *supra* note 23, at 65.

121. See *id.*

122. The term "misconduct" is used to mean anything ranging from recalcitrance to an extramarital affair.

123. See YAMANI, *supra* note 23, at 73.

to corporal punishment.<sup>124</sup> When a wife displeases her husband or becomes recalcitrant, the husband may first vocally admonish her.<sup>125</sup> If the undesired behavior continues, he may deprive her of sexual relations.<sup>126</sup> If a wife still remains recalcitrant, the husband may resort to physical force.<sup>127</sup> Islamic scholars maintain that this type of punishment does not give husbands permission to beat their wives.<sup>128</sup> Instead, hitting is to be done with something akin to a toothbrush or a pencil, and should never be to the face.<sup>129</sup> Consequently, the scholars maintain, the action of hitting one's wife in this manner is meant simply to show displeasure as opposed to inflict harm.<sup>130</sup> However, because the wife has no reciprocal right to express displeasure with her husband,<sup>131</sup> her role in marriage is inherently subordinate.

While one means of punishing a Muslim wife is the use of corporal punishment,<sup>132</sup> in certain instances she may become subject to an honor killing.<sup>133</sup> Honor killings are rooted in tradition as opposed to the Koran.<sup>134</sup> Honor killings occur in some Muslim countries when a woman is suspected of sexual immorality, either by pre-marital relations or an extramarital affair.<sup>135</sup> When a woman is subject to an honor killing, her murderer can receive a mitigated sentence or be acquitted altogether.<sup>136</sup> Sadly, in these circumstances, a woman's murderer is never brought to justice. This is a fate that Muslim males never have to face in the name of "honor."<sup>137</sup>

Muslim females experience a range of rights throughout the

124. *See id.*

125. *See id.*

126. *See id.*

127. *See id.*

128. *See* YAMANI, *supra* note 23, at 73.

129. *See id.*

130. *See id.*

131. *See id.*

132. *See id.*

133. *See* WOMEN IN ISLAM, *supra* note 23, at 67.

134. *See id.* (stating that while the Koran has the harsh punishment of 100 lashings for sexually immoral behavior of both men and women, honor killings are not provided for in the text).

135. *See id.*

136. *See, e.g.,* KELLEY FLECK, SAWSAN GHARAILBEH, ALINE MATTÄ & YASMINE RASSAM, *The Status of Women in Iraq: An Assessment of Iraq's De Jure and De Facto Compliance with International Legal Standards*, American Bar Association Iraq Legal Development Project 35 (2005) [hereinafter FLECK], available at <http://www.wluml.org/english/news/status-of-women-in-iraq-ABA-ILDP-2005-EN.pdf#search=%22Iraq%22> (last visited Oct. 26, 2007). In Iraq, when a man claims he killed a woman because she dishonored him, the maximum penalty he may receive is three years incarceration. Moreover, there can be no rebuttal of the honor killing defense.

137. *See* WOMEN IN IRAQ, *supra* note 23, at 67-8.

world.<sup>138</sup> The extent to which anything in this range qualifies as equal treatment is beyond the scope of this Comment. Regardless of women’s equality in Islam’s religious texts, it is important to examine women’s status in Iraq specifically, and whether they suffer injustice in the name of religion.

### III. A Glance Into the History of Women in Iraq

Approximately ninety-five percent of Iraqis are Muslim.<sup>139</sup> As a general matter, women in Iraq have enjoyed more rights than those in neighboring Middle Eastern countries.<sup>140</sup> After gaining independence in 1958,<sup>141</sup> the revolutionary government adopted the Personal Status Code (the “Code”)—providing equal rights for women.<sup>142</sup> While Shari’a law still governed familial matters, the drafters of the Code relied on Sunni and Shi’ite interpretations of Shari’a law as opposed to interpretations with a more conservative view of women’s rights.<sup>143</sup>

In 1963, Saddam Hussein’s Ba’ath party took control of the Iraqi government and the rights of Iraqi women began to decline.<sup>144</sup> The new political powers amended the Code to reflect more traditional roles of Muslim women.<sup>145</sup> These more traditional interpretations of Shari’a law permitted polygamy and disproportional inheritance for females.<sup>146</sup>

In 1970, Hussein’s regime adopted a constitution<sup>147</sup> which was later amended in 1990.<sup>148</sup> Each version of the constitution provided for “formal equality” between men and women as well as “non-discrimination” against women.<sup>149</sup> Partially as a result of these constitutional provisions, Hussein’s regime passed laws ordering the eradication of illiteracy.<sup>150</sup> Consequently, women of all classes had access to literacy centers and the literacy gap between males and females

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138. See generally *id.*

139. See *Hearings*, *supra* note 1, at 14.

140. See FLECK, *supra* note 136, at 1.

141. See Feldman, *supra* note 6, at 888.

142. See FLECK, *supra* note 136, at 1.

143. See *id.*

144. See *Background on Women’s Status in Iraq Prior to the Fall of the Saddam Hussein Government*, Human Rights News [hereinafter *Background*], <http://www.hrw.org/backgrounder/wrd/iraq-women.htm> (last visited Oct. 26, 2007).

145. See FLECK, *supra* note 136, at 1.

146. See *id.*

147. See FLECK, *supra* note 136, at 1-2.

148. See *id.*

149. See *id.* at 5. In 1990, the 1970 Constitution was amended, but the clause providing for women’s equality was unchanged. These prior Constitutions each provided that “[c]itizens are equal before the law, without discrimination because of sex. . . .” IRAQ CONST. art. 19(a) (repealed 2005).

150. See *Background*, *supra* note 144.

narrowed significantly.<sup>151</sup> Moreover, labor laws were passed which granted women in the workplace maternity leave and rights to be free from harassment at work.<sup>152</sup>

Despite these advances, the "protection" of female rights enshrined within these earlier constitutions were ignored and violated without protest.<sup>153</sup> In fact, laws were passed which permitted polygamy,<sup>154</sup> restricted the movement of women,<sup>155</sup> and mitigated sentences for the homicide of women.<sup>156</sup> Since the end of the Gulf War, women's rights have steadily declined because the United Nations sanctions against Iraq disproportionately affected its female population.<sup>157</sup> Faced with economic hardship, Hussein pulled funds from women's programs.<sup>158</sup> Moreover, in an effort to garner support and solidify his leadership, Hussein permitted a shift to a more traditionalist interpretation of Shari'a law.<sup>159</sup> Consequently, the number of women in the workplace declined and literacy rates plummeted.<sup>160</sup> Hussein's regime even passed a law which mitigated the punishment for the honor killing of women.<sup>161</sup>

Although Iraqi women enjoyed greater access to education and work out of the home at times,<sup>162</sup> Hussein's endorsement of women's rights ceased when it came to the political sector.<sup>163</sup> In 1972, the Ba'ath party created the General Federation of Iraqi Women ("GFIW") as a platform for women in the political arena.<sup>164</sup> The GFIW ran over 250 community centers which provided "job-training, educational, and other

151. *See id.*

152. *See id.*

153. *See FLECK, supra* note 136, at 1-2.

154. *See id.*

155. *See id.*

156. *See id.* at 35. Iraq adopted an honor killing defense for the crime of murder, which provides:

Any person who surprises his wife or close female relative in the act of adultery and kills them immediately or one of them or assaults one of them so that he or she dies or is left permanently disabled is punishable by a period of detention not exceeding 3 years. It is not permissible to exercise the right of legal defense against any person who uses this excuse nor do the rules of aggravating circumstances apply against him.

IRAQ PENAL CODE No. 111, art. 409.

157. *See Background, supra* note 144. When Iraq began receiving sanctions from the United Nations, Hussein forced the burden onto Iraq's female population by taking the funds from their social programs.

158. *See id.*

159. *See id.*

160. *See id.*

161. *See id.*; FLECK, *supra* note 136, at 35; *Casualties of War: Iraqi Women's Rights Then and Now*, [http://www.soros.org/initiatives/women/events/casualties\\_20031117](http://www.soros.org/initiatives/women/events/casualties_20031117) (last visited Oct. 7, 2006).

162. *See FLECK, supra* note 136, at 1-2.

163. *See id.*

164. *See id.*

social programs for women. . . ."<sup>165</sup> However, since the GFIW was controlled by the Ba'ath party,<sup>166</sup> it did little for the women of Iraq in terms of gaining access to the political arena.<sup>167</sup> In truth, the GFIW was merely an arm of the Ba'athist regime created to give the illusion of female participation in politics.<sup>168</sup> Female Iraqis who advocated for privileges beyond those provided through GFIW were subject to "rape, torture and public beheadings."<sup>169</sup>

#### IV. The Path to Iraq's New Constitution

The push for Iraq's new government has long been encouraged from both inside and outside of its borders.<sup>170</sup> The dissenters, internal and external, shared a common goal: removing Hussein from power.<sup>171</sup>

##### A. *Internal Forces for Regime Change*

Iraq is composed of a diversity of ethnic and religious groups.<sup>172</sup> The three largest factions are the Kurds, the Shi'ites, and the Sunnis.<sup>173</sup> For the most part, these groups have segregated themselves geographically;<sup>174</sup> however, in the major metropolitan areas, such as Baghdad, there is significant overlap of ethnic and sectarian lines.<sup>175</sup> Historically, the Kurds and Shi'ites have been the loudest internal dissenters of Hussein's regime.<sup>176</sup>

Kurdish Iraq is located at the Northern end of the country bordering Turkey.<sup>177</sup> The Iraqi Kurds have been self-sufficient and essentially a government unto themselves.<sup>178</sup> During the Iran-Iraq war, Iraqi Kurds fought alongside Iranians, opposing their fellow Iraqis.<sup>179</sup> In response, Hussein's regime issued a ban on "all human existence" within Iraq's Kurdish territory.<sup>180</sup> Hussein's regime began random attacks within the

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165. *Background*, *supra* note 144.

166. *See* FLECK, *supra* note 136, at 2.

167. *See id.*

168. *See id.*

169. *Id.*

170. *See generally* LOSING IRAQ, *supra* note 11.

171. *See* Feldman, *supra* note 6, at 889.

172. *See* LOSING IRAQ, *supra* note 11, at 23.

173. *See Hearings*, *supra* note 1, at 15 (statement of Prof. Bernard Haykel). The Kurds and Sunnis each compose approximately twenty percent of the population, while the Shi'ites compose the remaining sixty percent.

174. *See id.* at 9 (testimony of Prof. Kenneth M. Pollack).

175. *See id.*

176. *See* Feldman, *supra* note 6, at 886-89.

177. *See* LOSING IRAQ, *supra* note 11, at 2.

178. *See id.* at 21.

179. *See id.* at 22.

180. *Id.*

territory, including a chemical weapons attack on March 16, 1998.<sup>181</sup> These attacks caused the death of 182,000 Iraqi Kurds,<sup>182</sup> 5,000 of whom perished during Hussein's chemical weapons attack.<sup>183</sup> In response, the United States established a no-fly zone over Iraqi-Kurdistan to stop the loss of human life.<sup>184</sup> Hussein in turn isolated the Kurds by placing an embargo on all food and fuel going into Iraqi-Kurdistan.<sup>185</sup> Ultimately, this facilitated the Kurds' self-sufficiency.<sup>186</sup>

For their part in speaking out against Hussein's tyranny, the Shi'ite population led a revolt against the Ba'athist regime during the Gulf War.<sup>187</sup> The Shi'ites inhabit Southern Iraq.<sup>188</sup> While the Shi'ites constitute a much larger portion of the population,<sup>189</sup> the Sunnis have continually played a larger role in Iraqi politics.<sup>190</sup> After the Shi'ites revolted, Hussein drained their water supply in Southern Iraq causing environmental disasters and forcing them to relocate.<sup>191</sup>

As a consequence of their government's betrayal, major political groups from both the Kurdish and Shi'ite populations joined to form the Iraqi National Congress ("INC") in 1992.<sup>192</sup> The INC's primary objective was to overthrow the Ba'athist regime,<sup>193</sup> but it was not effective in carrying out its mission until it obtained assistance from outside Iraq's borders.

### *B. External Forces for Regime Change*

Since 1998, it has been the "official policy" of the United States to change the regime within Iraq.<sup>194</sup> The September 11, 2001 terrorist attacks against the United States became the impetus for United States action within State.<sup>195</sup> On January 29, 2002, President George W. Bush delivered a speech to the United States Congress identifying Iraq as one of three countries constituting an "axis of evil."<sup>196</sup>

181. *See id.* at 23.

182. *See* LOSING IRAQ, *supra* note 11, at 23.

183. *See id.* at 2.

184. *Id.* at 25.

185. *Id.* at 21.

186. *See id.*

187. *See* LOSING IRAQ, *supra* note 11, at 24.

188. *See* Hearings, *supra* note 1, at 9 (testimony of Prof. Kenneth M. Pollack).

189. *See id.*

190. *See* LOSING IRAQ, *supra* note 11, at 23.

191. *See id.* at 24.

192. *See* Feldman, *supra* note 6, at 888-89.

193. *See id.* at 889.

194. LOSING IRAQ, *supra* note 11, at 67 (quoting Iraq Liberation Act of 1998, Pub. L. No. 105-338).

195. *See id.* at 17-20.

196. *Id.* at 17 (quoting President George W. Bush, State of the Union Address (Jan.

In August 2002, the United States' Bush administration and Iraqi opposition officials set a date for a political conference to begin discussing the possibility for Iraq's transition into democracy.<sup>197</sup> It was through a series of these meetings that United States officials and Iraqi exiles first discussed the creation of a new constitution.<sup>198</sup> From these meetings, Islam was identified as the state religion and a "principal source of legislation"<sup>199</sup>—language later written into the Constitution.<sup>200</sup> Moreover, these meetings determined an initial process of drafting the Constitution.<sup>201</sup> During the transition period, a representative group of "academics[,] law scholars, as well as politicians and religious scholars" would draft the constitution to be adopted by referendum.<sup>202</sup>

On Wednesday, March 19, 2003, the United States Armed Forces began "Operation Iraqi Freedom" after the expiration of a forty-eight hour warning period to Hussein.<sup>203</sup> Within a month, on April 9, 2003, the United States' forces captured Baghdad and commemorated the event with the tumble of a statue of Hussein in Firdos Square.<sup>204</sup> President Bush subsequently announced victory in Iraq on May 1, 2003.<sup>205</sup> Power was temporarily transferred to the Coalition Provisional Authority ("CPA").<sup>206</sup> The CPA passed an interim constitution, the Transitional Administrative Law ("TAL"), which governed affairs in Iraq until a new permanent constitution could be drafted and adopted.<sup>207</sup>

The interim Iraqi government set a timeline with the first elections being held in January 2005.<sup>208</sup> These elections chose a 275 person assembly primarily responsible for drafting the new Constitution of Iraq.<sup>209</sup> In January, over 8.5 million Iraqis voted for the assembly.<sup>210</sup> Iraq's new Constitution was adopted by referendum on October 15, 2005.<sup>211</sup>

Contemporaneous with the establishment of a new Iraqi

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29, 2002)).

197. *See id.* at 37.

198. *See id.* at 98-9.

199. *See* LOSING IRAQ, *supra* note 11, at 99.

200. *See* IRAQ CONST. chap. 1, art. 2 1st.

201. *See* LOSING IRAQ, *supra* note 11, at 100.

202. *Id.*

203. *See* Center for Security Policy, Operation Iraqi Freedom—A Timeline of Events 3 (2003).

204. *See* LOSING IRAQ, *supra* note 11, at 243.

205. *See id.*

206. *See* Feldman, *supra* note 6, at 890.

207. *See id.* at 890-91.

208. *See* DODGE, *supra* note 2, at 37.

209. *See id.*

210. *See id.* at 38.

211. *See id.* at 11.



government, tensions in the country rose.<sup>212</sup> When Hussein was removed from power, loyalists instantly started an insurgency.<sup>213</sup> Hussein's Ba'athist regime maintained weapons stockpiles throughout the country.<sup>214</sup> Once his army was disarmed, individuals simply returned to their communities and utilized these stockpiles as weapons against coalition forces.<sup>215</sup> The insurgency started out by targeting troops, new Iraqi governmental institutions, and international institutions.<sup>216</sup> Although the insurgency began as an unorganized rebellion, as time progressed the insurgents organized themselves and became more sophisticated in their attacks against the new government.<sup>217</sup> The vulnerability of Iraqi citizens has caused frustration and doubt with the occupation.<sup>218</sup> As one commentator stated, the insurgency "undermine[s] attempts to deliver to the Iraqi population what they have been demanding since the fall of the Ba'athist regime: law and order."<sup>219</sup> Consequently, while Iraq has adopted a new Constitution and government, the State remains in disarray because of the violence imposed upon the citizenry.<sup>220</sup>

## V. Iraq's New Constitution

### A. *The Constitutional Rights of Women*

Chapter Two of the Constitution provides the "Rights and Freedoms" given to all Iraqis.<sup>221</sup> The most apparent right granted to women in the Constitution is the acknowledgement that "Iraqis are equal before the law without discrimination because of sex. . . ."<sup>222</sup> However, this "Non-Discrimination Clause"<sup>223</sup> raises more questions than it answers. Does "without discrimination" mean equality of the sexes? Is there a difference between being equal and being free from discrimination?<sup>224</sup> Perhaps a further analysis of the text will shed some

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212. *See id.*

213. *See* DODGE, *supra* note 2, at 11.

214. *See id.*

215. *See id.* at 12.

216. *See id.*

217. *See id.*

218. *See* DODGE, *supra* note 2, at 12.

219. *Id.*

220. *See id.* at 9-23.

221. *See* IRAQ CONST. chap. 2.

222. IRAQ CONST. chap. 2, part 1, art. 14 ("Iraqis are equal before the law without discrimination because of sex, ethnicity, nationality, origin, colour, religion, sect, belief, opinion or social or economic status").

223. *Id.*

224. There is a strong argument that the lack of discrimination means equality of the

light on the inquiries raised by the Non-Discrimination Clause.

Apart from the Non-Discrimination Clause, another Article within Chapter Two speaks directly to a right guaranteed to women.<sup>225</sup> Article Twenty guarantees women the right "to participate in public matters and enjoy political rights, including the right to vote and run as candidates."<sup>226</sup> Again, this language raises several questions. Does the fact that Article Twenty specifically references women mean that it grants a right which would not otherwise be conferred under the Non-Discrimination Clause, or does it merely emphasize that which the Non-Discrimination Clause covers? Furthermore, what rights of women are contained within the terms "public matters" and "political rights?" The end of the clause states that this language includes "the right to vote and run as candidates,"<sup>227</sup> but indicates that other rights exist which are not specifically listed.<sup>228</sup>

Perhaps most important are the rights that are guaranteed to "all Iraqis."<sup>229</sup> The Constitution defines an "Iraqi" as "anyone who has been born to an Iraqi father or Iraqi mother."<sup>230</sup> Thus, women born to an Iraqi parent are Iraqis *per se*. That definition of Iraqi arguably grants women every right within the Constitution guaranteed to Iraqis, regardless of whether the right is specifically conferred upon females.<sup>231</sup>

Ultimately, the referenced clauses, particularly the Non-Discrimination Clause,<sup>232</sup> appear to provide for the equality of men and women when read with the preamble which promises to "give equal opportunity to all"<sup>233</sup> and to "pay attention to women and their

sexes. The Non-Discrimination Clause calls for "equality" without "discrimination." Textually then, it appears that any difference in treatment would constitute discrimination since equality is in essence defined as the lack of discrimination. *See id.* ("Iraqis are equal before the law *without discrimination* because of sex, ethnicity, nationality, origin, colour, religion, sect, belief, opinion or social or economic status") (emphasis added).

225. *See* IRAQ CONST. chap. 2, part 1, art. 20 ("Citizens, male and female, have the right to participate in public matters and enjoy political rights, including the right to vote and run as candidates.").

226. *Id.*

227. *Id.*

228. *See id.* ("Citizens, male and female, have the right to participate in public matters and enjoy political rights, *including* the right to vote and run as candidates") (emphasis added). The use of the word "including" in Article Twenty indicates that the list is not exhaustive.

229. *See, e.g.,* IRAQ CONST. chap. 2, part 2, art. 22 ("Work is a right for *all Iraqis*. . .") (emphasis added); *Id.* at chap. 2, part 1, art. 16 ("Equal opportunity is a right guaranteed to *all Iraqis*. . .") (emphasis added).

230. IRAQ CONST. chap. 2, art. 18 1st.

231. *See, e.g., id.* at chap. 2, part 2, art. 22 ("Work is a right for *all Iraqis*. . .") (emphasis added); *Id.* at chap. 2 part 1 art. 16 ("Equal opportunity is a right guaranteed to *all Iraqis*. . .") (emphasis added).

232. IRAQ CONST. chap. 2, part 1, art. 14.

233. *Id.* at pmbl.

rights[.]”<sup>234</sup> Yet, to the contrary, the Constitution also contains several provisions that seemingly contradict many of the clauses that confer rights upon women.

### *B. The Constitutional Role of Islam*

Before bestowing “Rights and Privileges”<sup>235</sup> upon the Iraqi people, the Constitution proclaims its “Basic Principles.”<sup>236</sup> One of the first basic principles of the Constitution is that “Islam is the official religion of the state and is a basic source of legislation[.]”<sup>237</sup> Not only does that mandate identify Islam as a source of legislation, but it continues to make Islamic law supreme, at least to the extent that the Islamic rule is “undisputed.”<sup>238</sup> Additionally, it concludes by stating: “(b) [n]o law can be passed that contradicts the principles of democracy[.]”<sup>239</sup> and “(c) [n]o law can be passed that contradicts the rights and freedoms outlined in this Constitution.”<sup>240</sup> This clause, by itself, causes a tension which may ultimately create a constitutional anomaly. If an undisputed rule of Islamic law regarding a woman’s role in society would contradict a right or freedom contained in the Constitution, subsections (a) and (c) of the clause seem to be in irreconcilable conflict. Again, a further analysis of the text may resolve some of the tension.

The composition of the new judiciary indicates a potential resolution to the conflict.<sup>241</sup> The Constitution mandates that “[t]he Supreme Federal Court will be made up of a number of judges and experts in Shari’a (Islamic Law) and law, whose selection will be defined by a law that should be passed by two-thirds of the parliament members.”<sup>242</sup> Citizens deprived of their constitutional rights must rely on the Court for a remedy.<sup>243</sup> Textually, this clause does not shed additional light on the problem, but raises other issues which will become relevant via a historical and structural analysis.

The Constitution also attempts to relax the tension it creates by

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234. *Id.*

235. *See id.* at chap. 2.

236. *See generally id.* at chap. 1.

237. IRAQ CONST. chap. 1, art. 2 1st.

238. *See* IRAQ CONST. chap. 1, art. 2 1st(a) (“No law can be passed that contradicts the *undisputed* rules of Islam”) (emphasis added).

239. *Id.* at chap. 1, art. 2 1st(b).

240. *Id.* at chap. 1, art. 2 1st(c).

241. *See id.* at chap. 3, art. 90 2d.

242. *Id.* at chap. 3, art. 90 2d.

243. *See* IRAQ CONST. chap. 3, art. 91 4th (giving the Supreme Federal Court the responsibility of deciding cases that arise from the discriminatory implementation of federal legislation).

constructing a release mechanism.<sup>244</sup> Article Forty-Five permits the "restricting or limiting" of any freedom or liberty within the Constitution.<sup>245</sup> However, the restriction of constitutional rights must happen "by, or according to, law[,]" and cannot "undermine the essence of the right or freedom."<sup>246</sup> This clause seems in direct conflict with Chapter Two Article Two, First (c) which forbids the passage of laws that contradict a right within the Constitution.<sup>247</sup> If the terms "contradict" and "restrict" were defined differently, which the Constitution does not itself answer, then it is arguably possible for the Parliament to pass legislation which restricts a constitutional right without contradicting it. If so, one is still left with the question of what it means to "undermine the essence of the right or freedom"<sup>248</sup> as a limit on the permitted restriction.

Since the text of the Constitution does not resolve the underlying anomaly, it is necessary to turn to other methods of constitutional analysis to accurately determine the victor of the tug-of-war. To determine whether women's advancement will prevail under the Constitution, history and the mechanisms for enforcing rights will be analyzed.

## VI. The Constitution in a Historical Perspective

Although granted more rights than their Middle Eastern neighbors,<sup>249</sup> women in Iraq have experienced a steady decline in the enjoyment of their rights.<sup>250</sup> Reflection upon past constitutions,<sup>251</sup> societal reaction to women's rights,<sup>252</sup> and the composition of the Supreme Federal Court<sup>253</sup> raise questions about the future of women's rights in Iraq.

Iraq's experience with previous constitutional protections of women is indicative of the current constitutional scheme's likely success.<sup>254</sup> On

244. See *id.* at chap. 2, art. 45.

245. *Id.* ("Restricting or limiting any of the freedoms and liberties stated in this constitution may only happen by, or according to, law and as long as this restriction or limitation does not undermine the essence of the right or freedom.").

246. *Id.*

247. Compare IRAQ CONST. chap. 1, art. 2 1st(c) (forbidding the passage of laws which contradict rights outlined in the Constitution), with IRAQ CONST. chap. 2, art. 45 (permitting the restriction of rights within the Constitution as long as the restriction does not undermine the essence of the right).

248. IRAQ CONST. chap. 2, art. 45.

249. See FLECK, *supra* note 136, at 1.

250. See *Background*, *supra* note 144.

251. See FLECK, *supra* note 136, at 5.

252. See FLECK, *supra* note 136, at 7, 37.

253. See IRAQ CONST. chap. 3, art. 90 2d.

254. See FLECK, *supra* note 136, at 5 ("[c]itizens are equal before the law, without

paper, women have been equal for nearly the past four decades.<sup>255</sup> Under the 1970 Constitution and its subsequent amendments, women were "protected" with similar anti-discrimination language,<sup>256</sup> yet despite these earlier *constitutional* "protections," women's rights have steadily declined.<sup>257</sup> Since the end of the Gulf War, women's literacy, education, and out-of-home work all suffered.<sup>258</sup>

If the general population of Iraq's new democracy is not willing to recognize the equality of women, the treatment of women will not change, regardless of the constitutional guarantees.<sup>259</sup> Nowhere is the general population's reluctance to accept an advanced role of women more apparent than in the context of women's role in the political sphere.<sup>260</sup> The new Constitution explicitly recognizes a woman's right to participate in politics, yet society has resisted.<sup>261</sup> The abuse of Hussein's regime socialized females into lacking the will to enforce their constitutional rights.<sup>262</sup> Moreover, those who overcome their conditioning do so under threat of kidnapping and assassination.<sup>263</sup> Because women are unlikely to participate politically due to nearly four decades of oppression<sup>264</sup> and fear of physical threat,<sup>265</sup> they cannot practically exercise their rights.

In addition to the obstacles of merely exercising their rights, Iraqi women will have difficulty vindicating their violated rights.<sup>266</sup> The Supreme Federal Court will not only be composed of legal minds,<sup>267</sup> but Islamic scholars as well.<sup>268</sup> The Parliament has the duty of enacting

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discrimination because of sex").

255. *See id.*

256. *See id.* Both the Constitution of 1970 and the amended Constitution of 1990 used the exact same language as the current Non-Discrimination clause with the exception of replacing the word "citizens" with "all Iraqis."

257. *See Background, supra* note 144.

258. *Id.*

259. *See FLECK, supra* note 136, at 3 ("Iraq's current discriminatory legislative provisions illustrate that constitutional provisions alone do not guarantee women the fulfillment of their rights").

260. *See id.* at 7, 37.

261. *See IRAQ CONST.* chap. 2, part 1, art. 20.

262. *See FLECK, supra* note 136, at 7 (noting that women have lost their "political will").

263. *See id.* (explaining that since women have attempted to re-enter the political sphere they have been subject to kidnappings and assassinations); *see also id.* at 37 (relaying research statistics which state of 400 women who were raped after the fall of the regime for exercising their political rights, about half were later killed by their loved ones in honor killings).

264. *See Background, supra* note 144.

265. *See FLECK, supra* note 136, at 7.

266. *See IRAQ CONST.* chap. 3, art. 90 2d.

267. *See id.*

268. *See id.*

legislation to set the number of Islamic scholars and legal scholars to sit on the Court.<sup>269</sup> The fact that Islamic scholars, without training in law, will sit on the Court is detrimental to women's progress. Using the Court's capacity to interpret the Constitution, Islamic scholars can hinder women's progress in two ways: first, they can define constitutional rights guaranteed to women in such a way as to permanently freeze women's progress in time,<sup>270</sup> and second, under Article Forty-Five, they can uphold any discriminatory law which, in their minds, does not undermine the essence of women's rights.<sup>271</sup> At its extreme, these results could write women's rights out of the Constitution in the name of religion.

Against such a backdrop of oppression to women,<sup>272</sup> the tension created by the ambiguous text of the Constitution is likely to settle in favor of the familiarity of oppression. Since women have yielded to inequality for so long in Iraq,<sup>273</sup> it is unlikely that they will step out of the status quo because of mere words written on paper.<sup>274</sup> Those brave enough to step up and claim their promised rights are met with resistance by society at large<sup>275</sup> and the very institution that should protect their rights.<sup>276</sup> If the adage is true and "history repeats itself," women's new constitutional rights are simply ink on paper. The Constitution plants a seed of equality without providing the nourishment for growth.

Perhaps more troubling than the prolonged injustice to women is the greater implication created by it. Once the religious provisions of the Constitution strike out women's rights, a portion of the Constitution has effectively been erased.<sup>277</sup> Erasing even one provision of the Constitution undermines its legitimacy.<sup>278</sup> Ignoring any constitutional provision violates the supremacy the Constitution is to hold as the law of the land. This opens the floodgates for other provisions to go ignored without issue since the effectiveness of the Constitution has already been abolished. Ultimately, the Constitution may become an empty promise: words on a page which state officials forget to read.

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269. *See id.*

270. *See id.* at chap. 3, art. 91 3rd (delegating the duty of interpreting the Constitution to the Supreme Federal Court).

271. *See IRAQ CONST.* chap. 2, art. 45.

272. *See Background, supra* note 144.

273. *See id.*

274. *See FLECK, supra* note 136, at 3.

275. *See id.* at 7.

276. *See IRAQ CONST.* chap. 3, art. 90 2d.

277. *See DORSEN ET AL., supra* note 13, at 1.

278. *See id.*

## VII. Conclusion

Since the end of the Gulf War, Iraqi women have watched as their status in society stumbled.<sup>279</sup> Since 1970, they have been "equal" according to their state constitutions, yet discriminatory treatment continues to increase as time passes.<sup>280</sup>

An expert in Iraqi politics has maintained that "Iraqis must believe that this is their own constitution, reflective of their own values and their own traditions."<sup>281</sup> If particular provisions counter the values and traditions of the society in general, the government and populous will erase them from the page.<sup>282</sup>

The new Iraqi Constitution promises women protections and privileges that they have been promised for almost the past forty years.<sup>283</sup> Because women have been forced to forfeit their constitutional rights in the past,<sup>284</sup> they have lost the political will to vindicate those rights.<sup>285</sup> Sadly, those who are currently attempting to exercise their "new" constitutional rights are having their lives threatened.<sup>286</sup> Consequently, women will likely return to their inferior position in Iraqi society.

Once this unfortunate series of events takes place, the Constitution's provisions granting women's rights will be erased.<sup>287</sup> The erosion of these provisions from the Constitution will open the flood gates to permit other provisions to lie dormant. If this is permitted to occur, it will be impossible for the Constitution to establish the rule of law in Iraq. To prevent this from happening, the new government in Iraq must be more proactive with regards to women's rights, because "constitutional provisions alone do not guarantee women the fulfillment of their rights."<sup>288</sup>

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279. See *Background*, *supra* note 144.

280. See FLECK, *supra* note 136, at 5.

281. *Hearings*, *supra* note 1, at 8 (testimony of Prof. Kenneth M. Pollack).

282. See FLECK, *supra* note 136, at 3.

283. Compare IRAQ CONST. art. 19(a) (1970) (repealed 2005), with IRAQ CONST. chap. 2, part 1, art. 14.

284. See *Background*, *supra* note 144.

285. See FLECK, *supra* note 136, at 7.

286. *Id.*

287. See DORSEN ET AL., *supra* note 13, 1.

288. FLECK, *supra* note 136, at 3.